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8 and DR. WALTER LIEW

9
10 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
11 **OAKLAND DIVISION**

12 E.I. DU PONT DE NEMOURS AND
13 COMPANY,

14 Plaintiff

15 vs.

16 USA PERFORMANCE TECHNOLOGY,
17 INC., PERFORMANCE GROUP (USA),
INC., WALTER LIEW, and JOHN LIU,

18 Defendants

Case No. 3:11-CV-1665-MEJ

**EX PARTE APPLICATION TO EXTEND
TIME FOR DEFENDANTS TO RESPOND TO
COMPLAINT**

Honorable Jeffrey S. White
U.S. District Court Judge

MOUNT, SPELMAN & FINGERMAN, P.C.
RIVERPARK TOWER, SUITE 1650
333 WEST SAN CARLOS STREET
SAN JOSE, CALIFORNIA 95110-2740
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1 Defendants USA PERFORMANCE TECHNOLOGY, INC. (“USA PTI”), PERFORMANCE
2 GROUP (USA), INC. (“Performance Group”), and DR. WALTER LIEW (“Dr. Liew”) (collectively
3 “Defendants”) respectfully requests the Court to enter an Order allowing for a *two week* extension of
4 time for Defendants to respond to Plaintiff E.I. DU PONT DE NEMOURS AND COMPANY’s
5 (“DuPont”). No dates set forth in the Court’s ADR Scheduling Order (see Docket no. 5) would
6 require modification.
7

8 In support of this request, Defendants state as follows:

- 9 1. Defendants were served on April 7, 2011, and Defendants’ response due date is April
10 28, 2011 (see Docket no. 13).
- 11 2. In hopes of bringing resolution to this matter, Defendants initiated a meeting with
12 Plaintiffs. The parties and their counsel met for a face-to-face meeting on Tuesday, April 26 that
13 lasted for about four hours. During this meeting, counsel for Defendants requested an extension of
14 time to respond to Plaintiff’s Complaint. Counsel for Defendants reiterated this request by email that
15 same night.
16 3. On April 27, counsel for Plaintiff responded that the requested extension would be
17 granted only on the condition that Defendants “permit discovery to proceed promptly, including
18 authorization for the release of documents from Chevron to the parties.” Defendants refused this
19 condition and asked Plaintiff to reconsider its position.
20 4. Plaintiff has not changed its position. Defendants now seek redress from this Court.
21 (See email thread attached as Exhibit A.)
22

23
24 FOR THE ABOVE REASONS, Defendants respectfully requests the Court to enter an Order
25 extending Defendants’ response date from April 28, 2011 to May 12, 2011 (two weeks).
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1 Date: April 27, 2011

MOUNT, SPELMAN & FINGERMAN, P.C.

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5 On Lu
6 Counsel for Defendants USA PERFORMANCE
7 TECHNOLOGY, INC.; PERFORMANCE GROUP (USA), INC.;
8 and DR. WALTER LIEW

9 **IT IS SO ORDERED.**

10 Date: _____

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12 Honorable Jeffrey S. White
13 U.S. District Court Judge
14 Northern District of California
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EXHIBIT A

From: On Lu
To: ["Collins, Clark"](#)
Cc: [Daniel S. Mount](#); [Monique L. Davalos](#); ["Michael Clarke"](#); [Clem Glynn](#); [Jowers, Jason C.](#)
Subject: RE: USAPE001: Stipulation to Extend Time to Respond to Complaint
Date: Wednesday, April 27, 2011 3:31:00 PM

Hi Clark,

Of course we're obligated to discovery, but at its appointed time, as per the local rules. We are *not* interested in swapping an extension of time for the expedited discovery you've specified in your email. Thanks.

oN

From: Collins, Clark [mailto:PCollins@morrisjames.com]
Sent: Wednesday, April 27, 2011 3:25 PM
To: On Lu
Cc: Daniel S. Mount; Monique L. Davalos; 'Michael Clarke'; Clem Glynn; Jowers, Jason C.
Subject: RE: USAPE001: Stipulation to Extend Time to Respond to Complaint

On,

We do not understand your response. Are you unwilling to agree to proceed with discovery? If that is your position, we will ask Judge White for relief. What we proposed was reciprocal accommodations. If that is not acceptable to your client, that would be a bad sign regarding how the litigation will proceed. Please clarify what your objection is.

Clark

Morris James LLP

P. Clarkson Collins, Jr.

Attorney at Law

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From: On Lu [mailto:olu@MOUNT.com]
Sent: Wednesday, April 27, 2011 6:01 PM
To: Collins, Clark
Cc: Daniel S. Mount; Monique L. Davalos; 'Michael Clarke'; Clem Glynn; Jowers, Jason C.
Subject: RE: USAPE001: Stipulation to Extend Time to Respond to Complaint

Sorry, Clark. USA PTI does not agree to your terms. We will file our Request for an Extension of Time as an opposed motion. You should be aware that the Northern District and Judge White routine grants extensions of time. Please advise by 400 pm PST if DuPont changes its position.

Thanks,

oN

From: Collins, Clark [mailto:PCollins@morrisjames.com]
Sent: Wednesday, April 27, 2011 2:44 PM
To: On Lu
Cc: Daniel S. Mount; Monique L. Davalos; 'Michael Clarke'; Clem Glynn; Jowers, Jason C.
Subject: RE: USAPE001: Stipulation to Extend Time to Respond to Complaint

On...As we discussed yesterday during our meeting, in connection with an extension of time for your clients to respond, DuPont would like to have your agreement to permit discovery to proceed promptly, including authorization for the release of documents from Chevron to the parties. This suit and protecting DuPont's trade secrets is a matter of great importance and urgency to DuPont. I understand that it may take a few days to work out this broader agreement, and we will extend you the courtesy of a one week extension while we attempt to work out these details. If we are able to reach agreement regarding discovery and you need more time to respond to the complaint, we can provide for that in the agreement. Clark

Morris James LLP

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Attorney at Law

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From: On Lu [mailto:olu@MOUNT.com]
Sent: Tuesday, April 26, 2011 11:33 PM
To: Collins, Clark
Cc: Daniel S. Mount; Monique L. Davalos
Subject: USAPE001: Stipulation to Extend Time to Respond to Complaint

Hi Clark,

It was a pleasure to meet you this afternoon. As discussed, please see the attached Stipulation to Extend Time for Defendants to Respond to DuPont's Complaint. With your approval, we'd like to get this on-file with the court tomorrow (Wed, 4/27).

Thanks and kind regards,

oN

This email and its attachments are intended solely for the intended recipient hereof and may contain legally privileged or other confidential information. If you have received this email or its attachments in error, please destroy the original and any copies thereof and immediately notify Mount, Spelman & Fingerman, P.C. at (408) 279-7000.